

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 99-111

October 25, 1999

MAINE PUBLIC UTILITIES COMMISSION  
Offer Bidding Procedure

Order Provisionally  
Designating Standard  
Offer Providers and Rejecting  
Certain Bids

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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## **I. SUMMARY**

In this Order, we provisionally designate standard offer providers for customers in the service territory of Maine Public Service Company (MPS). This designation is subject to a review of MPS's Chapter 307 auction results. We reject the standard offer service bids received for the service territories of Central Maine Power Company (CMP) and Bangor Hydro-Electric Company (BHE), terminate the current request for bids (RFB) processes and initiate new selection processes for standard offer providers for CMP and BHE customers. Finally, we describe and seek comment on issues that may arise, depending on the outcome of the new selection processes.

## **II. BACKGROUND**

During its 1997 session, the Legislature enacted comprehensive legislation to restructure Maine's electric utility industry. P.L. 1997, ch. 316 (codified at 35-A M.R.S.A. §§ 3201-3217). That legislation provides that all electricity consumers in Maine will have the right to purchase generation services from competitive electricity providers beginning March 1, 2000. The Legislature recognized that, at least initially, not all consumers would want or be able to obtain generation services from the competitive market. Accordingly, the Legislature required standard offer service to be available for all electricity consumers who do not otherwise obtain service from the competitive market. 35-A M.R.S.A. § 3212. The Legislature decided that the providers of standard offer service would be chosen by the Commission through a bid process<sup>1</sup> and directed the Commission to promulgate rules to govern the bid and selection process.

Through Orders issued April 22, 1998 and June 29, 1999, the Commission adopted Chapter 301 of its rules. Chapter 301 governs standard offer service and the

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<sup>1</sup> The Legislature subsequently modified the statute to allow consumer-owned utilities (COUs) to opt to conduct their own standard offer bid processes. 35-A M.R.S.A. § 3212(6). The COUs chose to do so.

provider selection process.<sup>2</sup> Docket Nos. 97-739, 98-576. Pursuant to Chapter 301, there is a separate bid process for each utility service territory. Within each territory, bidders may bid on three separate customer classes (residential and small non-residential, medium non-residential, and large non-residential). Bidders are required to commit to a fixed price for a 12-month period and must post security to ensure they are financially capable of providing standard offer service at their stated price.

Consistent with the provisions in Chapter 301, on August 2, 1999 the Commission issued three RFBs: one each to provide standard offer service to customers of CMP, BHE, and MPS. On October 1, 1999 the Commission received proposals in response to the RFBs. On October 8, 1999, letters were sent to companies that submitted proposals (bidders) seeking clarification or additional material regarding their proposals. In accordance with the RFBs, bidders were asked to respond by October 18, 1999.

The proposals submitted in response to the RFBs were reviewed by the Commission, its staff and consultants. We evaluated the bids in accordance with section 8 of Chapter 301 to determine the lowest standard offer prices and whether multiple providers should be selected for one or more standard offer class.

In the next section, we describe the results of the RFBs for MPS, CMP and BHE and our decisions regarding each bid process.

### III. DECISION

#### A. Maine Public Service Company

Based on the results of our RFB process for MPS, we designate two standard offer providers for the MPS service territory: WPS Energy Services, Inc (WPS-ESI), and Energy Atlantic (EA). The designated providers by standard offer class, each provider's class share, and resulting standard offer prices for each class are shown below.

Class	Price	Provider(s)	Share
Residential/small non-residential	\$0.042906/kWh	WPS-ESI	100%
Medium non-residential	\$0.042549/kWh	WPS-ESI EA	80% 20%
Large non-residential	\$0.040038/kWh	WPS-ESI	100%

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<sup>2</sup> These rules are denominated as "major substantive," thus requiring legislative approval under 5 M.R.S.A. § 3212. The Legislature has approved the rules. Resolve 1999, ch.37; Resolves 1997, ch.100.

This designation of standard offer providers and class share amounts is subject to our review of the results of MPS's Chapter 307 auction of its non-divested generation asset (i.e., Wheelabrator-Sherman QF contract).<sup>3</sup> Such a review is necessary to ensure that acceptance of the standard offer bids is in the public interest. Depending on the results of MPS's Chapter 307 auction, the Commission may wish to consider whether ratepayers would be better off by rejection of the Chapter 307 bids and use of the output of the Wheelabrator-Sherman contract to serve a portion of standard offer load.

We seek comment from any interested person on how the Commission should evaluate the bids in the two processes to determine whether acceptance is in the public interest. Specifically, how should the Commission analyze whether the difference in bid prices is so large that the public interest would be better served by using the Chapter 307 output to serve a portion of the standard offer load.

As required by Section 2.3 of the RFB, each of the above - designated providers must have a valid license pursuant to Chapter 305 of the Commission's rules. The license must be sufficient to allow the licensee to provide standard offer service in MPS's service territory. EA currently has a license that would allow it to provide standard offer service. WPS-ESI has a license application pending with a decision expected in the near future. Each designated provider must also execute a standard contract with MPS and must furnish the financial security instrument described in its proposal.<sup>4</sup> As described in Section 2.3.1 of the RFB, the financial security instrument must be furnished to MPS with a copy to the Commission and must be effective and subject to being drawn upon in the full amount.

We determined the standard offer provider class share amounts shown above in accordance with sections 8.C.2 and 8.C.4 of Chapter 301. These sections specify how providers will be chosen for each standard offer class and the conditions under which multiple providers will be designated. Section 8.C.2 requires the Commission to select the standard offer provider or combination of standard offer providers whose bid prices result in the lowest cost standard offer service for each class. If this does not result in at least three providers in the utility service area, the Commission must consider the higher cost bids. The Commission must select additional providers in a manner that minimizes the total cost of standard offer service in the service area, if doing so does not increase by more than 0.5% the total electric rates customers in any standard offer class will pay.

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<sup>3</sup> MPS is required to file the results of Chapter 307 auction by November 1, 1999.

<sup>4</sup> The RFB specifies that the contract must be signed and the security furnished within 2 weeks of being designated a standard offer provider. As stated above, the designation in this Order is provisional. The 2 weeks deadline will begin upon final designation.

B. Central Maine Power Company and Bangor Hydro-Electric Company

1. Rejection of Bids

Pursuant to our authority under Chapter 301, section 8(D), we reject all the proposals received for the CMP and BHE service territories. Several proposals received for the CMP and BHE standard offer classes were not in conformance with the terms and requirements of Chapter 301 and the RFB, and are rejected on that basis. With regard to the proposals that conformed to Chapter 301 and the RFB, we find the bid prices for standard offer service to be unreasonably high. Acceptance of these bids would not be in the public interest and, thus, we reject the conforming bids on that basis. Specifically, the conforming bid prices for CMP and BHE standard offer service exceeded the winning standard offer bid price for comparable standard offer classes of MPS by a substantial amount.<sup>5</sup>

We conclude that the bid prices received for the CMP and BHE service territories are unreasonably high and must be rejected for the following reasons. As mentioned above, the bids are substantially higher than the comparable standard offer class bids in the MPS territory. The reasons for such a result are not apparent; however, the results suggest possible problems with the emerging electricity markets at the current time. CMP and BHE are part of the ISO-NE control area and, thus, have access to a wholesale electricity market that spans the six New England States, as well as Canada and New York. The ISO-NE market has many participants and a great variety of available generation resources. In contrast, MPS is within the Maritimes control area in which NB Power is the dominant entity; there are significantly fewer market participants. The electricity markets in New Brunswick are not open to competition, leaving the relatively small area of northern Maine as the only competitive market within the Maritimes control area. Under these circumstances, we would not expect significantly higher prices for the CMP and BHE areas if the markets are operating effectively.

At this point, it is unclear why the standard offer bid prices for CMP and BHE customers were so much higher than those proposed for MPS customers. It is possible that the immaturity of the ISO-NE markets, the changing nature of the market rules, the extremely high spot market prices at certain times over recent months, and uncertainty regarding transmission pricing and other matters in the region may all be contributing factors to the anomalous CMP and BHE bids. Additionally, a similar bid process for standard offer service occurred in Massachusetts and Connecticut at the same time as our process, possibly impacting the bids in Maine. Regardless of the reasons, we find the bids for the CMP and BHE areas to be unacceptable.

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<sup>5</sup> As discussed below, we will initiate a new, streamlined bid process. We intend to provide more information about the current bid process and our evaluation of its results after our evaluation of the new bids.

## 2. New Selection Process

For the reasons stated, we will terminate the CMP and BHE RFB processes and initiate new selection processes pursuant to Section 1.6 of the RFBs. The new selection processes will be streamlined compared to the initial RFBs due to the need to either select standard offer providers in the near term or, if the new selection process does not produce acceptable bids, establish a price and procure power supply for standard offer service through other means.

The new standard offer selection process will proceed as follows. The Commission will send letters to all bidders in the initial CMP, BHE and MPS RFB standard offer processes and to all bidders in the utilities' pending Chapter 307 auctions for the output of non-divested generation assets.<sup>6</sup> We are limiting the solicitation to existing bidders in the two processes because information is already available to allow for a timely assessment of whether the new bids will conform to all of the bid requirements.

Bidders will have two options. A bidder can submit proposals consistent with either or both of these options. First, a proposal can be submitted for any standard offer class (or portion thereof in 20% increments)<sup>7</sup> in the CMP and BHE territories up to the provisionally accepted standard offer prices in the MPS territory: \$0.042906/kWh for the residential/small non-residential classes; \$0.042549/kWh for medium non-residential classes; and \$0.040038/kWh for large non-residential classes. Second, a proposal can be for any standard offer class (or portion thereof in 20% increments)<sup>8</sup> in the CMP and BHE territories in combination with a bid on the output of that utility's non-divested generation assets. A combined proposal in which standard offer prices exceed the MPS provisionally adopted prices will be allowed; however, at this point, the Commission has a strong inclination to accept standard offer bid prices at or below the MPS levels.

We understand that CMP and BHE are currently working with bidders that submitted proposals in response to the utilities' Chapter 307 RFBs.<sup>9</sup> The resulting agreements are subject to Commission review and approval. However, at this point, given our rejection of the CMP and BHE standard offer bids we wish to consider both options described above, in our new bidding process.

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<sup>6</sup> The letter will explain in detail the requirements of the new bid process.

<sup>7</sup> For the purpose, we waive the requirement in Chapter 301, § 7(B)(3) that there be bids on 100% of the medium and large classes.

<sup>8</sup> See note 7, above.

<sup>9</sup> Utilities are required to file the results of the auctions by November 1, 1999. We will defer ruling on the results until after receipt of the new bid results.

Bids reflecting a combination of standard offer and Chapter 307 may yield a favorable result for ratepayers, while continuing to promote a competitive electricity market in Maine. The designation of providers that agree to provide standard offer service at reasonable prices would avoid the uncertainty and risks inherent with the alternative: directing utilities to procure supply for standard offer service. That alternative would result in uncertain standard offer rates, as well as possible utility deferrals of costs that customers would have to pay in the future if standard offer prices diverge from power supply costs.<sup>10</sup> Such an outcome would likely cause customer confusion and resistance to industry restructuring, and impede the development of a competitive market in Maine because competitors could not be sure of the standard offer price they would be competing against. For these reasons, it is reasonable to attempt the selection process as described above.

We will require responses by November 8, 1999, and expect to announce the results of the new selection process by December 1, 1999.

### 3. Utility Procurement

In the event the new selection process does not result in reasonable bids for the entire standard offer service requirements of CMP and BHE customers, we will follow the procedures contained in section 8(D) of Chapter 301. Specifically, we will direct CMP and BHE to provide additional standard offer service through wholesale arrangements with suppliers or from the spot market until the Commission acts in the future to designate standard offer providers. In addition, in accordance with section 8(D)(3) of Chapter 301, the Commission will establish rates for standard offer service in classes for which all of the standard offer service requirements are not met by the designated standard offer providers.

To ensure that our decisions in implementing the provisions of section 8(D) of Chapter 301, should they be necessary, are fully-informed, we seek input from interested persons on the issues described below, as well as on any other relevant issue. We ask that written comments on these issues be filed by November 5, 1999. We may schedule a conference of interested persons shortly thereafter to further discuss these matters and provide opportunity for further input before the Commission determines how to proceed.

We also ask interested persons to address the question set forth in section 3.A of this Order regarding the relationship between standard offer prices and the prices received by utilities pursuant to their RFBs for the entitlement in their non-divested generation assets. Comments on this issue should also be submitted by November 5, 1999.

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<sup>10</sup> Utilities are entitled to full cost recovery pursuant to Chapter 301, § 8(D).

4. Power Supply

a. For what period of time should CMP and/or BHE (the utilities) provide standard offer service? Should the Commission immediately conduct another standard offer bid process or wait until the regional market develops further?

b. What types of power supply arrangements should the utilities seek? Should they enter contracts with suppliers? If so, what should the length of the contracts be? For example, is a series of short-term contracts preferable to a contract for a longer term? To what extent should the utilities rely on the ISO-NE spot market? Should the Commission direct these aspects of the utilities' arrangements, or allow the utilities to determine the most efficient procurement actions?

c. Should the Commission consider rejecting bids received for the utilities' QF and other non-divested generation entitlements and retain the capacity and energy for standard offer service? If so, how would the stranded costs of these contracts be measured?

d. If all or a significant portion of the non-divested generation entitlements were retained as supply for standard offer service, how would this affect the ability of suppliers in Maine to comply with the resource portfolio requirement?

5. Standard offer rates

a. If all or a substantial portion of a standard offer class's requirements are provided by the utilities from the wholesale power market, how should the Commission determine what prices customers in that class should pay for standard offer service? Our current view is that the accepted bid prices for the comparable MPS standard offer classes may be a reasonable proxy to use for the standard offer prices for CMP and BHE. Please comment on the merits of this approach.

b. Should the Commission-set prices be based on the cost of wholesale power supply procured by the utilities to provide standard offer service?

c. How important is it that standard offer prices be set on December 1, 1999? If necessary, should the Commission wait until the underlying cost of power is known before setting standard offer prices?

d. Once standard offer prices are determined, should they remain fixed for the 12-month standard offer period? Under what circumstances should they change? For example, should the rates change to reflect the underlying wholesale cost of supply to avoid large deferrals under Chapter 301, § 8(D)(3).

e. Are administratively-set standard offer prices reasonable for the purpose of implementing the top-down approach adopted by the Commission in Docket No 97-580? If not, what alternatives exist for this purpose?

f. What are the implications for other marketers in the service territories of CMP and BHE of setting standard offer prices for CMP and BHE at the MPS levels? At levels reflecting the cost of the utilities' wholesale power supply?

Dated at Augusta, Maine, this 25th day of October, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.